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'Get the Job Done': Judge Wants Impeachment Witness Suit Quickly Resolved

U.S. District Judge Richard Leon scheduled a Dec. 10 oral argument in Charles Kupperman's case, which pits the White House against House Democrats. Impeachment investigators want to hear from Kupperman, represented by veteran Washington lawyer Charles Cooper.

By C. Ryan Barber | October 31, 2019



Charles Cooper, of Cooper & Kirk, and Attorney General Jeff Sessions' attorney, during Sessions' testimony before the Senate Intelligence Committee, on June 13, 2017.

A Washington federal trial judge on Thursday set a speedy timeline for addressing questions over whether the Trump White House can lawfully block current and former top officials from speaking to House investigators leading the impeachment inquiry.

U.S. District Judge Richard Leon of the District of Columbia was asked last week to assess a clash between Trump and congressional Democrats, an interbranch tug-of-war that flared up over a House subpoena seeking testimony from former national security adviser Charles Kupperman.

Kupperman, represented by Charles Cooper of Cooper & Kirk, is seeking clarity on whether he is obligated to comply with the House subpoena or with the White House's instructions to not cooperate. In a **lawsuit** (https://www.law.com/nationallawjournal/2019/10/28/house-faces-first-court-test-over-witness-testimony-in-impeachment-inquiry/?cmp=share_twitter) filed against Trump and congressional leaders, including House Speaker Nancy Pelosi, Kupperman's lawyers said he is "faced with irreconcilable commands by the legislative and executive branches of the government."

During a half-hour hearing Thursday, Leon scheduled a Dec. 10 oral argument in Kupperman's case, with filings due every two weeks from November until early December. At the end of the hearing, Justice Department attorney Elizabeth Shapiro said that the government's final deadline before the argument fell on Dec. 4, just days after Thanksgiving.



U.S. District Judge Richard Leon in Washington. Credit: Diego M. Radzinschi / NLJ

Leon scoffed at her request for additional time, telling the career Justice Department litigator, "You're obviously not familiar with this court."

For a matter of such public concern and consequence, he said, "you roll your sleeves up and get the job done."

"Vacations and other distractions take second place," Leon said, adding that other Justice Department lawyers could work on the filing if Shapiro is unable to do so.

"So get the job done," he said.

Any ruling in the case could have ramifications reaching beyond Kupperman as House investigators ramp up their impeachment inquiry, a probe that has centered on Trump's efforts to pressure Ukraine to investigate former Vice President Joe Biden and his son Hunter Biden. More than a dozen witnesses have spoken to investigators, and still others more are being called in.

House investigators have asked former national security adviser John Bolton, another client of Cooper's, to appear for a closed-door interview next week. Kupperman served as a deputy to Bolton, who left the White House in September.

At Thursday's hearing, Cooper demurred when Leon asked whether Bolton would be added to the case. Leon said he aware that Cooper was representing the former Trump national security adviser, who served under the George W. Bush administration as ambassador to the United Nations.

Cooper said he was hopeful for a quick resolution to the case, telling Leon that Kupperman was "indifferent to the outcome" and prepared to follow whichever course the judge decided was proper.

"We have no dog in the merits fight, your honor," Cooper said, describing Kupperman's predicament as a "classic catch-22."

House deputy general counsel Todd Tatelman argued Kupperman had failed to bring a "justiciable" claim, saying that the request for a judge's guidance was "antithetical" to the adversarial system. Leon appeared to have considered that argument in advance of the hearing, telling Cooper in an early exchange that trial courts generally are "not in the business" of issuing advisory opinions.

Tatelman also argued that the Constitution's "speech or debate" clause immunized the House against Kupperman's lawsuit, which he said was filed for "no other purpose" than to delay the impeachment process.

Trump has denied that he engaged in any inappropriate conduct in his Ukraine dealings. In closed-door interviews, government officials have testified about a July phone call in which Trump appeared to ask Ukrainian President Volodymyr Zelensky to investigate the Bidens and about being troubled by a **shadow foreign policy**. (<https://www.law.com/nationallawjournal/2019/10/30/inconsistent-with-our-values-russia-ambassador-nominee-a-big-law-vet-grilled-over-trumps-ukraine-dealings/>) in Ukraine that was overseen by the president's personal lawyer, Rudolph Giuliani.

U.S. Rep. Adam Schiff of California, who is overseeing the impeachment inquiry as the Democratic leader of the House Intelligence Committee, criticized Kupperman's lawsuit earlier this week, saying it has "no basis in law."

"A private citizen cannot sue the Congress to try to avoid coming in when they are served with a lawful subpoena," Schiff said. "We expect that the court will make short shrift of that argument."

Leon isn't approaching Kupperman's case from a blank slate. He came to the bench in 2002 with a background in congressional investigations: Earlier in his career, Leon was counsel to Congress in investigations of three sitting presidents.

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